

ORIGINAL

# NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 17 2008

COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

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In the matter of:

DEBORAH CHERYL BENNETT, a married  
woman and  
A. JAMES BENNETT, M.D., a married man,  
Respondents.

DOCKET NO. S-20591A-08-0202

NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, ORDER FOR  
RESTITUTION, FOR ADMINISTRATIVE  
PENALTIES AND FOR OTHER  
AFFIRMATIVE ACTION

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Deborah Cheryl Bennett and A. James Bennett, M.D. have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

## I. JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

## II. RESPONDENTS

2. At all times relevant, Deborah Cheryl Bennett and A. James Bennett (collectively referred to as "Respondents") have been married to each other and were acting for their own benefit, and for the benefit or in furtherance of the marital community.

3. At all times relevant, Respondents were residents of Arizona.

4. Respondents were not registered as securities salespersons in Arizona during any time relevant hereto.

5. At all times material hereto, A. James Bennett was a licensed medical doctor in the State of Arizona specializing in dermatology.

### III. FACTS

6. Beginning as early as February 2006 and continuing through at least September 2007, Respondents solicited approximately \$10,000,000 from approximately fifteen investors through the offering of an unregistered investment opportunity involving “channel trading.”

7. “Channel trading” and “trading channel” both relate to the trading of stock based on the charting of a stock’s price. More specifically, when charting the price of a stock, the term “trading channel” refers to the space on the price chart between a stock’s support and resistance levels. The price of the stock is expected to stay within the support and resistance levels until a breakout occurs. “Channel trading” refers to the method of trading stocks whereby traders will purchase a stock when its price is near the bottom of the trading channel and sell it when the price gets close to the top of the trading channel, making a profit on the price spread.

8. Deborah Cheryl Bennett (“D. Bennett”) explained to prospective investors, both in person and via e-mail, that she would deposit money received from investors into a Charles Schwab trading account for the purpose of conducting stock trades or “channel trading.”

9. In order to entice investors to invest, D. Bennett represented to investors that she was a “Class A” trader, possessed “floor-level” trading capabilities and had been provided special software access by Charles Schwab.

10. D. Bennett assured investors that they could obtain a refund of their total amount invested at any time and personally guaranteed repayment of investors' funds while assuring investors that they could not lose their principal.

11. D. Bennett informed investors that if anything ever happened to her or A. James Bennett, M.D. ("J. Bennett"), her children knew how to liquidate the investments and return

1 investors' funds to them. Each of Respondents' two sons appears to have invested in excess of  
2 \$400,000.

3 12. There was no formal contract between D. Bennett and investors, investors were not  
4 provided any documentation describing the investment and investors were not required to provide  
5 any information related to their risk tolerance. Investors were informed that D. Bennett would  
6 utilize investors' funds to trade stocks based on her research and investment plan while paying  
7 investors their promised returns.

8 13. The returns promised to investors by D. Bennett on amounts invested for the  
9 purpose of channel trading varied over time, but included promises in some instances of 20-30%  
10 **monthly.**

11 14. D. Bennett continued to solicit existing investors with additional investment  
12 opportunities she claimed were "very, very private" and reserved for her "wealthier people." One  
13 such opportunity involved an opportunity to invest in an initial public offering (IPO) for a stock  
14 that she represented as offering a 40% return on investment with a required minimum investment  
15 of \$1,000,000.

16 15. D. Bennett informed one investor via e-mail that she was not earning a fee for the  
17 services that she was providing to her investors, but that "you should know I make more money on  
18 your investment than you are receiving back, each month."

19 16. D. Bennett represented to investors that they should classify their investments as a  
20 "loan" and urged them "not to disclose to anyone" that they were investing with her. She advised  
21 investors that they should not have to pay taxes on returns received on their investment until such  
22 time as the entire investment amount had been repaid to the investor. D. Bennett also indicated  
23 that investors were entitled to classify, from a tax perspective, a portion of their investment as a gift  
24 which would result in them receiving a significant tax benefit.

25 17. Respondents met prospective investors and continued to lure existing investors, in  
26 part, through involvement in various social and charitable organizations and activities.

1 Respondents contributed significant amounts of money to several social charitable organizations  
2 and showered several investors with cash and gifts. This conduct served to further convince  
3 investors that D. Bennett was successful in her channel trading venture.

4 18. Respondents failed to disclose to investors that investor money was being used to  
5 make charitable contributions and purchase gifts for investors.

6 19. J. Bennett solicited and received investor funds in the form of check(s) made  
7 payable to him personally. Said checks were deposited directly into the Respondents' personal  
8 checking account. J. Bennett represented that the funds would be used by D. Bennett to conduct  
9 stock trades and that he planned to quit his medical practice and work full time with his wife in the  
10 trading business since she had been so successful. J. Bennett also represented that his wife had  
11 never lost money while trading.

12 20. Contrary to Respondents' assertions, D. Bennett was not successful in her channel  
13 trading of stocks. As a result, the amounts paid to investors as returns were not derived solely from  
14 gains achieved through stock trades. To the contrary, Respondents were using other investors'  
15 funds to pay returns and repay principal to investors.

16 21. Respondents failed to disclose to investors any risks associated with the alleged  
17 investments and, in fact, represented that there were no risks.

18 22. Respondents failed to inform investors that they spent investor funds for their own  
19 personal use or benefit by making payments/withdrawals of:

- 20 a) Approximately \$2,000,000 to credit card companies;
- 21 b) Approximately \$108,000 to charitable/social organizations;
- 22 c) Approximately \$328,000 to mortgage companies;
- 23 d) Approximately \$225,000 to retail stores; and
- 24 e) Approximately \$37,000 in ATM machine withdrawals.

23. Respondents failed to inform investors that they spent investor funds to purchase an automobile(s), furniture, more than \$100,000 worth of jewelry, clothing, airline tickets and entertainment tickets.

**IV. VIOLATION OF A.R.S. § 44-1841**

**(Offer or Sale of Unregistered Securities)**

24. Respondents offered or sold securities in the form of investment contracts within or from Arizona.

25. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

26. This conduct violates A.R.S. § 44-1841.

**V. VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

27. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

28. This conduct violates A.R.S. § 44-1842.

**VI. VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

29. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents misrepresented to investors that there was no risk associated with the alleged investments;



1           4.       Order that the marital communities of Respondents be subject to any order of  
2 restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to  
3 A.R.S. § 25-215; and

4           5.       Order any other relief that the Commission deems appropriate.

5                               **VIII. HEARING OPPORTUNITY**

6           Each Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-  
7 306. **If a Respondent requests a hearing, the requesting respondent must also answer this**  
8 **Notice.** A request for hearing must be in writing and received by the Commission within 10  
9 business days after service of this Notice of Opportunity for Hearing. The requesting respondent  
10 must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W.  
11 Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by  
12 calling (602) 542-3477 or on the Commission's Internet web site at  
13 <http://www.azcc.gov/divisions/hearings/docket.asp>.

14           If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
15 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
16 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
17 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
18 Opportunity for Hearing.

19           Persons with a disability may request a reasonable accommodation such as a sign language  
20 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,  
21 ADA Coordinator, voice phone number 602/542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should  
22 be made as early as possible to allow time to arrange the accommodation.

23                               **IX. ANSWER REQUIREMENT**

24           Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting  
25 respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket  
26 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within

1 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from  
2 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
3 <http://www.azcc.gov/divisions/hearings/docket.asp>.

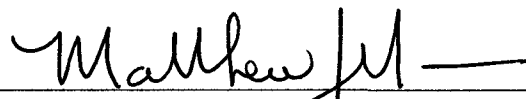
4 Additionally, the answering respondent must serve the Answer upon the Division.  
5 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
6 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
7 Arizona, 85007, addressed to William W. Black.

8 The Answer shall contain an admission or denial of each allegation in this Notice and the  
9 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
10 sufficient knowledge or information shall be considered a denial of an allegation. An allegation  
11 not denied shall be considered admitted.

12 When the answering respondent intends in good faith to deny only a part or a qualification  
13 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
14 admit the remainder. Respondent waives any affirmative defense not raised in the answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an  
16 Answer for good cause shown.

17 Dated this 17 day of April, 2008.

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20 Matthew J. Neubert  
21 Director of Securities

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